

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

APR 14 2008

MARK KERNEY WEAVER,

Plaintiff,

vs.

OKLAHOMA COUNTY SHERIFF'S
OFFICE et al.,

Defendants.

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA
BY W.H. DEPUTY

NO. CIV-07-847-W

ORDER

On March 20, 2008, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this matter and recommended that the Motion to Dismiss filed by defendants Ralph Newman, M.D., Edward Landis, Ph.D., and Federal Medical Center, Butner, North Carolina ("FMC-Butner") be granted. Plaintiff Mark Kerney Weaver was advised of his right to object to the Report and Recommendation, but no objection was filed within the allotted time.¹

¹The Clerk of the Court mailed Magistrate Judge Bacharach's Report and Recommendation to the address submitted to the Clerk on October 1, 2007. See Rule 5.5(a), Rules of the United States District Court for the Western District of Oklahoma (papers sent to last known address deemed delivered). The record indicates that the document was returned to the Clerk by the United States Postal Service with the following notations on the envelope: "Return to Sender" "Not Deliverable as Addressed" "Unable to Forward." See Doc. 48. Rule 5.5(a), supra, requires pro se litigants to provide the Court with a mailing address and to file with the Clerk notice of any change of address. Weaver did not comply with this Rule.

Despite the indication in the record that Weaver's whereabouts are unknown, the Court does take judicial notice that a warrant was issued for Weaver's arrest and that on March 12, 2008, he was remanded by United States Magistrate Judge Doyle W. Argo to the custody of the United States Marshal. See Doc. 4, Case No. M-08-47-AR.

The Court finds that despite Weaver's failure to receive the Report and Recommendation because of his failure to notify the Court of his change of address and despite the absence of any opportunity to object to the Report and Recommendation, an absence created by his own inaction, the Court has reviewed the record and finds that even if Weaver had received the Report and Recommendation and had timely filed an objection, he could not overcome the jurisdictional barriers raised by the defendants in this case.

Upon review of the record, the Court concurs with Magistrate Judge Bacharach's suggested disposition of the defendants' Motion to Dismiss. FMC-Butner is entitled to dismissal because as a federal agency, it is entitled to sovereign immunity. Drs. Newman and Landis in their individual capacities are likewise entitled to dismissal because this Court lacks in personam jurisdiction over these two defendants.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation issued on March 20, 2008;
- (2) GRANTS the Motion to Dismiss filed on February 6, 2008, by FMC-Butner, Dr. Newman and Dr. Landis based upon the grounds set forth in this Order; and
- (3) having now resolved all claims against all parties, DISMISSES this matter without prejudice.

ENTERED this 14th day of April, 2008.


LEE R. WEST
UNITED STATES DISTRICT JUDGE